

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JONATHON SPRADLING AND TERRY)	
TROUT,)	
)	
Plaintiffs,)	
)	
vs.)	Cause No. 4:10-CV-01801-JCH
)	
CITY OF BERKELEY, et al.,)	
)	
Defendants.)	

**RESPONSE OF DEFENDANT CITY OF BERKELEY TO PLAINTIFFS' MOTION FOR
LEAVE TO AMEND PLAINTIFFS' COMPLAINT**

Plaintiffs Terry Trout and Jonathon Spradling have filed a motion seeking leave to amend their Complaint. Specifically, Plaintiffs seek to add Detective Matthew Vegovich, Detective Thurmond Griffin, and Sergeant Ira Walker as defendants in this case.

Pursuant to this Court's Rule 16 Order, the parties filed with this Court a Joint Proposed Scheduling Plan. As part of this Joint Proposed Scheduling Plan, the parties suggested to the Court that all motions for joinder of additional parties or amendment of the pleadings shall be filed no later than May 1, 2011.

Following the submission of the Joint Proposed Scheduling Plan and after the Rule 16 conference, this Court entered its Case Management Order on March 14, 2011. As part of the Case Management Order, this Court ordered that all motions for joinder of additional parties or amendments of the pleadings shall be filed no later than May 1, 2011. Consequently, Plaintiffs' Motion for Leave to Amend the Complaint to Join Additional Parties is out of time.

Defendant City of Berkeley wishes to cooperate with Plaintiffs. However, we are not talking about a request for extra time to respond to discovery (which Plaintiffs in fact did request

and the City in fact consented to). Here, Plaintiffs seek to add as party defendants three police officers to a lawsuit. These three officers will be prejudiced if Plaintiffs are granted leave to amend their complaint and join additional parties.

In their Motion for Leave to amend their complaint, Plaintiffs state that in their initial complaint they did identify police officers John Doe One, Two and Three. However, on February 7, 2011, this Court ordered Plaintiffs to show cause in writing within fourteen (14) days why the action should not be dismissed as to John Doe One, Two and Three for lack of timely service. On February 24, 2011, this Court noted that Plaintiff failed to respond to its show-cause order, and therefore, this Court ordered that John Doe One, Two and Three are dismissed from this lawsuit.

Defendant City of Berkeley did identify these three police officers in the Initial Disclosures sent to counsel for Plaintiffs on March 15, 2011. Counsel for Defendant City of Berkeley also provided the names of these police officers to Plaintiffs' counsel over the telephone even earlier than March 15, 2011. Plaintiffs had ample time to add these officers prior to the May 1, 2011 deadline. Therefore, Defendant City of Berkeley cannot consent to Plaintiffs' Motion for Leave to amend their Complaint to join three of its police officers as Defendants in this case.

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CERTIFICATE OF SERVICE

A copy of the foregoing electronically filed using the Court's CM/ECF system and mailed this 17th day of October, 2011, to:

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